IN THE HIGH COURT OF MADHYA PRADESH JABALPUR

W.P.NO. 756 1995

PETITIONER: SMT. SHASHI W/O Shri K.K.Shukla, aged 30 years, Lower Division clerk, Raipur Distt. Fish Farmer's Development Agency, Raipur, resident of Sanjay Nagar, Tikrapara, Raipur Tahsil and Distt. Raipur (M.P.)

VERSUS

RESPONDENTS:

1. RAIPUR DISTT. FISH FARMERS DEVELOPMENT AGENCY, Raipur through its Chairman/Collector, Raipur Regd. Office - Collectorate, Raipur.
2. THE CHIEF EXECUTIVE OFFICER-CUM-SECRETARY, Raipur Distt. Fish Farmer's Development Agency, Raipur, Collectorate, Raipur.
3. THE DIRECTOR OF FISHERIES (Matsodhyog) Madhya Pradesh, Bhopal
4. THE GOVERNMENT OF MADHYA PRADESH through Secretary, Krishi Pashu Chikitsa) Vibhag Bhopal.

PETITION UNDER ART 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF AN APPROPRIATE WRIT, OR ORDER OR DIRECTION IN THE NATURE OF WRIT ETC.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 756 of 1995

Petitioner : Smt. Shashi Shukla

Versus

Respondents : Raipur District, Fish Farmer's Development Agency others

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Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri S. P. Sharma, Advocate for the Petitioner.

None for the respondents No. 1 and 2.

Shri V. V. S. Moorthy, Deputy Advocate General with Shri I. N. Shrivastava, Panel lawyer for the respondents No. 3 and 4.

ORDER

(22nd August, 2006)

1. The petitioner was initially appointed as Hindi Stenographer on daily wages on 1.5.1985 onwards. Thereafter the petitioner was appointed on the post of L.D.C. (Lower Division Clerk) on the pay scale of Rs. 870-1420, temporarily, vide order dated 12.11.1987 (Annexure P/7). The services of the petitioner was terminated vide order dated 28.2.1995 (Annexure P/10) w.e.f. 1.4.1995, as no loner required.

2. This Court after hearing learned counsel for both the parties granted stay of the operation of the impugned order dated 28.2.1995 (Annexure P/10) vide order dated 27.3.1995. The petitioner has been continuing thereafter on the same post.

3. Shri S. P. Sharma, learned counsel appearing for the petitioner submits that the impugned order dated 28.2.1995 visits with civil consequences and since the same was passed without following the principles of natural justice and without affording any opportunity of hearing to the petitioner, the order deserves to be quashed on the simple ground that the order is vitiated on account of non-compliance

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of the principles of natural justice and fair play in action. It is further contended that under the provisions of the Madhya Pradesh Government Servants (Temporary & Quasi-Permanent Service) Rules, 1960 (for short 'the Rules, 1960'), which has been adapted by the State of Chhattisgarh, the petitioner had acquired the quasi permanent status in service under Rule 3 A on having completed five years' temporary service on the post of L.D.C. The service of the petitioner could not have been terminated on any other ground, except, by strictly following the principles of natural justice and fair play in action.

4. Despite several notices to the respondents No. 1 and 2 i.e. Raipur District Fish Farmer's Development Agency, Raipur and Chief Executive Officer, Raipur District Fish Farmers Agency, Raipur, none appeared on their behalf. However, the reply on their behalf was filed on 12.5.1995. In the reply, the plea of the respondents No. 1 and 2 is that there should be a clear declaration of quasi permanent status under Rule 3 and 3 A of the Rules, 1960. It is admitted by the respondents No. 1 and 2 that the said Rules are applicable, as it is not the case of the respondents No. 1 and 2 that the said Rules are not applicable to the petitioner.

5. Shri V. V. S. Moorthy, learned Deputy Advocate General, assisted by Shri I. N. Shrivastava, Panel Lawyer, appearing for the respondents No. 3 and 4 submits that this case has to be contested by the respondents No. 1 and 2 as the State i.e. Respondents No. 3 and 4 have no interest in the case and there is no grievance of the petitioner against the respondents No. 3 and 4.

6. On the question of applicability of Rule 3 of the Rules 1960, Shri Moorthy in his usual frankness and fairness submits that in the present case where the petitioner has completed 5 years of temporary

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service, no declaration is necessary under Rule 3 A of the Rules 1960. Rule 3 of the Rules, 1960 is quoted hereunder:-

"3. A Government servant shall be deemed to be in quasi-permanent service,-

(i) if he has been in temporary service in the same service or post continuously for more than three years; and

(ii) if the appointing authority being satisfied as to his suitability in respect of age, qualifications, work and character for employment in a quasi-permanent capacity, has issued a declaration to that effect, in accordance with such instructions as the Governor may issue from time to time.

[Explanation-In computing continuous temporary service for the purposes of this rule and period of break in service during a vacation shall be counted as a period of actual service where, upon re-employment immediately after the vacation, the Government servant has been allowed to draw his pay and allowances in respect of such period.]

***3A.** Government servant in respect of whom a declaration under clause (ii) of rule 3 has not been issued but has been in temporary service continuously for five years in a service or post in respect of which such declaration could be made shall be deemed to be in quasi-permanent service unless for reasons to be recorded in writing the appointing authority otherwise orders."*

***"3AA.** For the purpose of rules 3 and 3A, in the case of an appointment,-*

(a) where consultation with the Public Service Commission is not required, a service which a Government servant has rendered prior to his temporary appointment according to the provisions of the recruitment rules or any instructions issued by the Governor from time to time, shall not be counted for reckoning the completed three years or five years of service, as the case may be;

(b) where consultation with the Public Service Commission is required, a service which a Government servant has rendered prior to his selection by the Public Service Commission shall not be counted for reckoning the completed three years or five years of service, as the case may be."

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7. Having heard learned counsel for the parties and having perused the records appended to the petition and reply, it is evident that the impugned order was passed without following the principles of natural justice and fair play in action. It is well settled principle of law that any order, which visits with civil consequences and prejudice the case of a government employee, cannot be passed without affording the opportunity of hearing to the employee concerned. In the present case it is admitted position that no opportunity of hearing was afforded to the petitioner and as such the impugned order dated 28.2.1995 (Annexure P/4) is vitiated.

8. The Supreme Court in catena of decisions i.e. **H. L. Trehan and others Vs. Union of India & others** { (1989) 1 SCC 764} and **Bhagwan Shukla Vs. Union of India and others** (AIR 1994 SC 2480) has clearly observed that the reduction in rank, without show cause notice and without opportunity of hearing amounts to flagrant violation of the principles of natural justice. The Supreme Court in the case of **Gajanan L. Pernekar Vs. State of Goa and another** { (1999) 8 SCC 378} held that the benefit could not have been taken away without affording an opportunity of hearing.

9. By virtue of the stay order dated 27.3.1995 passed by this Court, the petitioner has been continuing on the post of L.D.C. and further the order of termination was passed without following the principles of natural justice. For the reasons stated above the impugned order dated 28.2.1995 (Annexure P/10) is quashed.

10. The petition is accordingly allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur